

AMENDED IN SENATE JUNE 30, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 737**

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**Introduced by Committee on Environmental Safety and Toxic Materials (Chesbro (Chair), Miller (Vice Chair), Davis, Feuer, Monning, Ruskin, and Smyth)**

February 26, 2009

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An act to amend Sections 25251, 25257, 116450, 116455, and 116470 of the Health and Safety Code, relating to ~~public water systems~~ *environmental safety*.

LEGISLATIVE COUNSEL'S DIGEST

AB 737, as amended, Committee on Environmental Safety and Toxic Materials. ~~Public-Environmental safety: public water systems: public notification: Toxics Information Clearinghouse.~~

Existing law, known as the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adoption of enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law requires every public water system to notify users when certain monitoring or other requirements have not been complied with, to notify customers when failure to comply with a primary drinking water standard ~~that~~ represents an imminent danger, to notify consumers of confirmation of detected contaminants, and to annually deliver a prescribed consumer confidence report to each consumer.

This bill would, in addition, require posting of the notices and reports on the public water system's Internet Web site, if the public water system maintains an Internet Web site. The bill would permit the public water system to remove or amend the posted information when certain conditions are met.

*Existing law requires the Department of Toxic Substances Control to establish a Toxics Information Clearinghouse for the collection, maintenance, and distribution of specific chemical hazard traits and environmental and toxicological end-point data and defines "consumer product" for purposes of these provisions.*

*This bill would correct spelling errors and make other technical conforming changes to these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 25251 of the Health and Safety Code, as  
2     added by the first version of Section 1 of Chapter 560 of the  
3     Statutes of 2008, is amended to read:

4     25251. For purposes of this article, the following definitions  
5     shall apply:

6     (a) "Clearinghouse" means the Toxics Information  
7     Clearinghouse established pursuant to Section 25256.

8     (b) "Council" means the California Environmental Policy  
9     Council established pursuant to subdivision (b) of Section 71017  
10    of the Public Resources Code.

11    (c) "Office" means Office of Environmental Health Hazard  
12    Assessment.

13    (d) "Panel" means the Green Ribbon Science Panel established  
14    pursuant to Section 25254.

15    (e) "Consumer product" means a product or part of the product  
16    that is used, ~~brought~~, *bought*, or leased for use by a person for any  
17    purposes. "Consumer product" does not include any of the  
18    following:

19    (1) A dangerous drug or dangerous device as defined in Section  
20    4022 of the Business and Professions Code.

21    (2) Dental restorative materials as defined in subdivision (b) of  
22    Section 1648.20 of the Business and Professions Code.

1 (3) A device as defined in Section 4023 of the Business of  
2 Professions Code.

3 (4) A food as defined in subdivision (a) of Section 109935.

4 (5) The packaging associated with any of the items specified in  
5 paragraph (1), (2), or (3).

6 (6) A pesticide as defined in Section 12753 of the Food and  
7 Agricultural Code or the Federal Insecticide, Fungicide and  
8 Rodenticide Act (~~7 U.S.C. Sec. 136 and following~~) (7 U.S.C. Sec.  
9 *136 et seq.*).

10 (7) Mercury-containing lights defined as mercury-containing  
11 lamps, bulbs, tubes, or other electric devices that provide functional  
12 illumination.

13 (f) This section shall remain in effect only until December 31,  
14 2011, and as of that date is repealed, unless a later enacted statute,  
15 that is enacted before December 31, 2011, deletes or extends that  
16 date.

17 *SEC. 2. Section 25251 of the Health and Safety Code, as added*  
18 *by the second version of Section 1 of Chapter 560 of the Statutes*  
19 *of 2008, is amended to read:*

20 25251. For purposes of this article, the following definitions  
21 shall apply:

22 (a) “Clearinghouse” means the Toxics Information  
23 Clearinghouse established pursuant to Section 25256.

24 (b) “Council” means the California Environmental Policy  
25 Council established pursuant to subdivision (b) of Section 71017  
26 of the Public Resources Code.

27 (c) “Office” means Office of Environmental Health Hazard  
28 Assessment.

29 (d) “Panel” means the Green Ribbon Science Panel established  
30 pursuant to Section 25254.

31 (e) “Consumer product” means a product or part of the product  
32 that is used, ~~brought~~, *bought*, or leased for use by a person for any  
33 purposes. “Consumer product” does not include any of the  
34 following:

35 (1) A dangerous drug or dangerous device as defined in Section  
36 4022 of the Business of Professions Code.

37 (2) Dental restorative materials as defined in subdivision (b) of  
38 Section 1648.20 of the Business and Professions Code.

39 (3) A device as defined in Section 4023 of the Business of  
40 Professions Code.

1 (4) A food as defined in subdivision (a) of Section 109935.

2 (5) The packaging associated with any of the items specified in  
3 paragraph (1), (2), or (3).

4 (6) A pesticide as defined in Section 12753 of the Food and  
5 Agricultural Code or the Federal Insecticide, Fungicide and  
6 Rodenticide ~~(7 United States Code Sections 136 and following)~~

7 ~~(7 U.S.C. Sec. 136 et seq.)~~.

8 (f) This section shall become effective on January 1, 2012.

9 *SEC. 3. Section 25257 of the Health and Safety Code is*  
10 *amended to read:*

11 25257. (a) A person providing information pursuant to this  
12 article may, at the time of submission, identify a portion of the  
13 information submitted to the department as a trade secret and, upon  
14 the written request of the department, shall provide support for the  
15 claim that the information is a trade secret. Except as provided in  
16 subdivision (d), a state agency shall not release to the public,  
17 subject information supplied pursuant to this article that is a trade  
18 secret, and that is so identified at the time of submission, in  
19 accordance with Section 6254.7 of the Government Code and  
20 Section 1060 of the Evidence Code.

21 (b) This section does not prohibit the exchange of a properly  
22 designated trade secret between public agencies, if the trade secret  
23 is relevant and necessary to the exercise of the agency's jurisdiction  
24 and the public agency exchanging the trade secrets complies with  
25 this section. An employee of the department that has access to a  
26 properly designated trade secret shall maintain the confidentiality  
27 of that trade secret by complying with this section.

28 (c) Information not identified as a trade secret pursuant to  
29 subdivision (a) shall be available to the public unless exempted  
30 from disclosure by other provisions of law. The fact that  
31 information is claimed to be a trade secret is public information.

32 (d) (1) Upon receipt of a request for the release of information  
33 that has been claimed to be a trade secret, the department shall  
34 immediately notify the person who submitted the information.  
35 Based on the request, the department shall determine whether or  
36 not the information claimed to be a trade secret is to be released  
37 to the public.

38 (2) The department shall make the determination specified in  
39 paragraph (1), no later than 60 days after the date the department

1 receives the request for disclosure, but not before 30 days following  
2 the notification of the person who submitted the information.

3 (3) If the department decides that the information requested  
4 pursuant to this subdivision should be made public, the department  
5 shall provide the person who submitted the information 30 days'  
6 notice prior to public disclosure of the information, unless, prior  
7 to the expiration of the 30-day period, the person who submitted  
8 the information obtains an action in an appropriate court for a  
9 declaratory judgment that the information is subject to protection  
10 under this section or for a preliminary injunction prohibiting  
11 disclosure of the information to the public and promptly notifies  
12 the department of that action.

13 (e) This section does not authorize a person to refuse to disclose  
14 to the department information required to be submitted to the  
15 department pursuant to this article.

16 (f) This section does not apply to ~~hazardous~~ *hazard* trait  
17 submissions for chemicals and chemical ingredients pursuant to  
18 this article.

19 **SECTION 1.**

20 *SEC. 4.* Section 116450 of the Health and Safety Code is  
21 amended to read:

22 116450. (a) When any primary drinking water standard  
23 specified in the department's regulations is not complied with,  
24 when a monitoring requirement specified in the department's  
25 regulations is not performed, or when a water purveyor fails to  
26 comply with the conditions of any variance or exemption, the  
27 person operating the public water system shall notify the  
28 ~~department and~~ *department*, shall give notice to the users of that  
29 fact, and shall, if the public water system has an Internet Web site,  
30 post that notice on the public water ~~systems~~ *system's Internet* Web  
31 site, in the manner prescribed by the department. When a variance  
32 or an exemption is granted, the person operating the public water  
33 system shall give notice to the users of that fact.

34 (b) When a person operating a public water system determines  
35 that a significant rise in the bacterial count of water has occurred  
36 in water he or she supplies, the person shall provide, at his or her  
37 expense, a report on the rise in bacterial count of the water, together  
38 with the results of an analysis of the water, within 24 hours to the  
39 department and, where appropriate, to the local health officer.

1 (c) When the department receives the information described in  
2 subdivision (b) and determines that it constitutes an immediate  
3 danger to health, the department shall immediately notify the  
4 person operating the public water system to implement the  
5 emergency notification plan required by this chapter.

6 (d) In the case of a failure to comply with any primary drinking  
7 water standard that represents an imminent danger to the health  
8 of water users, the operator shall notify each of his or her  
9 customers, and shall, if the public water system has an Internet  
10 Web site, post that notice on that *Internet* Web site, as provided  
11 in the approved emergency notification plan.

12 (e) In addition, the same notification requirement shall be  
13 required in any instance in which the department or the local health  
14 department recommends to the operator that it notify its customers  
15 to avoid internal consumption of the water supply and to use bottled  
16 water due to a chemical contamination problem that may pose a  
17 health risk.

18 (f) The content of the notices required by this section shall be  
19 approved by the department. Notice shall be repeated at intervals,  
20 as required by the department, until the department concludes that  
21 there is compliance with its standards or requirements. Notices  
22 may be given by the department.

23 In any case where public notification is required by this section  
24 because a contaminant is present in drinking water at a level in  
25 excess of a primary drinking water standard, the notification shall  
26 include identification of the contaminant, information on possible  
27 effects of the contaminant on human health, and information on  
28 specific measures that should be taken by persons or populations  
29 who might be more acutely affected than the general population.

30 (g) Whenever a school or school system, the owner or operator  
31 of residential rental property, or the owner or operator of a business  
32 property receives a notification from a person operating a public  
33 water system under any provision of this section, the school or  
34 school system shall notify school employees, students, and parents  
35 if the students are minors, the owner or operator of a residential  
36 rental property shall notify tenants, and the owner or operator of  
37 business property shall notify employees of businesses located on  
38 the property.

39 (1) The operator shall provide the customer with a sample  
40 notification form that may be used by the customer in complying

1 with this subdivision and that shall indicate the nature of the  
2 problem with the water supply and the most appropriate methods  
3 for notification that may include, but ~~is~~ *are* not limited to, the  
4 sending of a letter to each water user and the posting of a notice  
5 at each site where drinking water is dispensed.

6 (2) The notice required by this subdivision shall be given within  
7 10 days of receipt of notification from the person operating the  
8 public water system.

9 (3) Any person failing to give notice as required by this  
10 subdivision shall be civilly liable in an amount not to exceed one  
11 thousand dollars (\$1,000) for each day of failure to give notice.

12 (4) If the operator has evidence of noncompliance with this  
13 subdivision the operator shall report this information to the local  
14 health department and the department.

15 (h) An operator that is required to post a notice on the public  
16 water system's Internet Web site pursuant to subdivision (a) or (d)  
17 may, upon rectifying the problem or complying with the standard  
18 that required notification, do either of the following:

19 (1) Remove the notice from the public water system's Internet  
20 Web site.

21 (2) Amend the notice posted on the public water system's  
22 Internet Web site to include the date on which the problem was  
23 rectified or compliance was achieved.

24 ~~SEC. 2.~~

25 *SEC. 5.* Section 116455 of the Health and Safety Code is  
26 amended to read:

27 116455. (a) A public water system shall comply with the  
28 requirements of this section within 30 days after it is first informed  
29 of a confirmed detection of a contaminant found in drinking water  
30 delivered by the public water system for human consumption that  
31 is in excess of a maximum contaminant level, a notification level,  
32 or a response level established by the department.

33 (1) If the public water system is a wholesale water system, then  
34 the person operating the wholesale water system shall notify the  
35 wholesale water system's governing body and the water systems  
36 that are directly supplied with that drinking water. If the wholesale  
37 water system is a water company regulated by the California Public  
38 Utilities Commission, then the wholesale water system shall also  
39 notify the commission. The commission, in the exercise of its  
40 general and specific powers to ensure the health, safety, and

1 availability of drinking water served by the utilities subject to its  
2 jurisdiction, may order further action that is not inconsistent with  
3 the standards and regulations of the department to ensure a potable  
4 water supply.

5 (2) If the public water system is a retail water system, then the  
6 person operating the retail water system shall notify the retail water  
7 system's governing body and the governing body of any local  
8 agency whose jurisdiction includes areas supplied with drinking  
9 water by the retail water system. If the retail water system is a  
10 water company regulated by the California Public Utilities  
11 Commission, then the retail water system shall also notify the  
12 commission. The commission, in the exercise of its general and  
13 specific powers to ensure the health, safety, and availability of  
14 drinking water served by the utilities subject to its jurisdiction,  
15 may order further action that is not inconsistent with the standards  
16 and regulations of the department to ensure a potable water supply.

17 (b) The notification required by subdivision (a) shall identify  
18 the drinking water source, the origin of the contaminant, if known,  
19 the maximum contaminant level, response level, or notification  
20 level, as appropriate, the concentration of the detected contaminant,  
21 and the operational status of the drinking water source, and shall  
22 provide a brief and plainly worded statement of health concerns.  
23 The notice shall, if the public water system has an Internet Web  
24 site, also be posted on the public water system's Internet Web site.

25 (c) For purposes of this section, the following terms have the  
26 following meanings:

27 (1) "Drinking water source" means an individual groundwater  
28 well, an individual surface water intake, or, in the case of water  
29 purchased from another water system, the water at the service  
30 connection.

31 (2) "Local agency" means ~~a city or~~ city, county, or a city and  
32 county.

33 (3) "Notification level" means the concentration level of a  
34 contaminant in drinking water delivered for human consumption  
35 that the department has determined, based on available scientific  
36 information, does not pose a significant health risk but warrants  
37 notification pursuant to this section. Notification levels are  
38 nonregulatory, health-based advisory levels established by the  
39 department for contaminants in drinking water for which maximum  
40 contaminant levels have not been established. Notification levels



1 are established as precautionary measures for contaminants that  
2 may be considered candidates for establishment of maximum  
3 contaminant levels, but have not yet undergone or completed the  
4 regulatory standard setting process prescribed for the development  
5 of maximum contaminant levels and are not drinking water  
6 standards.

7 (4) "Response level" means the concentration of a contaminant  
8 in drinking water delivered for human consumption at which the  
9 department recommends that additional steps, beyond notification  
10 pursuant to this section, be taken to reduce public exposure to the  
11 contaminant. Response levels are established in conjunction with  
12 notification levels for contaminants that may be considered  
13 candidates for establishment of maximum contaminant levels, but  
14 have not yet undergone or completed the regulatory standard setting  
15 process prescribed for the development of maximum contaminant  
16 levels and are not drinking water standards.

17 (5) "Retail water system" means a public water system that  
18 supplies water directly to the end user.

19 (6) "Wholesale water system" means a public water system that  
20 supplies water to other public water systems for resale.

21 (d) An operator that is required to post a notice on the public  
22 water system's Internet Web site pursuant to subdivision (b), may,  
23 upon rectifying the problem *or* complying with the standard that  
24 required notification, do either of the following:

25 (1) Remove the notice from the public water system's Internet  
26 Web site.

27 (2) Amend the notice posted on the public water system's  
28 Internet Web site to include the date on which the problem was  
29 rectified or compliance was achieved.

30 ~~SEC. 3.~~

31 *SEC. 6.* Section 116470 of the Health and Safety Code is  
32 amended to read:

33 116470. (a) As a condition of its operating permit, every  
34 public water system shall annually prepare a consumer confidence  
35 report and mail or deliver a copy of that report to each customer,  
36 other than an occupant, as defined in Section 799.28 of the Civil  
37 Code, of a recreational vehicle park. The report shall, if the public  
38 water system has an Internet Web site, also be posted on the public  
39 water system's Internet Web site. A public water system in a  
40 recreational vehicle park with occupants as defined in Section

1 799.28 of the Civil Code shall prominently display on a bulletin  
2 board at the entrance to or in the office of the park, and make  
3 available upon request, a copy of the report. The report shall  
4 include all of the following information:

5 (1) The source of the water purveyed by the public water  
6 system.

7 (2) A brief and plainly worded definition of the terms  
8 “maximum contaminant level,” “primary drinking water standard,”  
9 and “public health goal.”

10 (3) If any regulated contaminant is detected in public drinking  
11 water supplied by the system during the past year, the report shall  
12 include all of the following information:

13 (A) The level of the contaminant found in the drinking water,  
14 and the corresponding public health goal and primary drinking  
15 water standard for that contaminant.

16 (B) Any violations of the primary drinking water standard that  
17 have occurred as a result of the presence of the contaminant in the  
18 drinking water and a brief and plainly worded statement of health  
19 concerns that resulted in the regulation of that contaminant.

20 (C) The public water system’s address and the ~~phone~~ telephone  
21 number to enable customers to obtain further information  
22 concerning contaminants and potential health effects.

23 (4) Information on the levels of unregulated contaminants, if  
24 any, for which monitoring is required pursuant to state or federal  
25 law or regulation.

26 (5) Disclosure of any variances or exemptions from primary  
27 drinking water standards granted to the system and the basis  
28 therefor.

29 (b) On or before July 1, 1998, and every three years thereafter,  
30 public water systems serving more than 10,000 service connections  
31 that detect one or more contaminants in drinking water that exceed  
32 the applicable public health goal, shall prepare a brief written report  
33 in plain language that does all of the following:

34 (1) Identifies each contaminant detected in drinking water that  
35 exceeds the applicable public health goal.

36 (2) Discloses the numerical public health risk, determined by  
37 the office, associated with the maximum contaminant level for  
38 each contaminant identified in paragraph (1) and the numerical  
39 public health risk determined by the office associated with the  
40 public health goal for that contaminant.

1 (3) Identifies the category of risk to public health, including,  
2 but not limited to, carcinogenic, mutagenic, teratogenic, and acute  
3 toxicity, associated with exposure to the contaminant in drinking  
4 water, and includes a brief plainly worded description of these  
5 terms.

6 (4) Describes the best available technology, if any is then  
7 available on a commercial basis, to remove the contaminant or  
8 reduce the concentration of the contaminant. The public water  
9 system may, solely at its own discretion, briefly describe actions  
10 that have been taken on its own, or by other entities, to prevent  
11 the introduction of the contaminant into drinking water supplies.

12 (5) Estimates the aggregate cost and the cost per customer of  
13 utilizing the technology described in paragraph (4), if any, to reduce  
14 the concentration of that contaminant in drinking water to a level  
15 at or below the public health goal.

16 (6) Briefly describes what action, if any, the local water  
17 purveyor intends to take to reduce the concentration of the  
18 contaminant in public drinking water supplies and the basis for  
19 that decision.

20 (c) Public water systems required to prepare a report pursuant  
21 to subdivision (b) shall hold a public hearing for the purpose of  
22 accepting and responding to public comment on the report. Public  
23 water systems may hold the public hearing as part of any regularly  
24 scheduled meeting.

25 (d) The department shall not require a public water system to  
26 take any action to reduce or eliminate any exceedance of a public  
27 health goal.

28 (e) Enforcement of this section does not require the department  
29 to amend a public water system's operating permit.

30 (f) Pending adoption of a public health goal by the Office of  
31 Environmental Health Hazard Assessment pursuant to subdivision  
32 (c) of Section 116365, and in lieu thereof, public water systems  
33 shall use the national maximum contaminant level goal adopted  
34 by the United States Environmental Protection Agency for the  
35 corresponding contaminant for purposes of complying with the  
36 notice and hearing requirements of this section.

37 (g) This section is intended to provide an alternative form for  
38 the federally required consumer confidence report as authorized  
39 by 42 U.S.C. Section 300g-3(c).

- 1 (h) A public water system that is required to include in its  
2 consumer confidence report the information described in paragraph  
3 (3) of subdivision (a), and that is required to post its consumer  
4 confidence report on its Internet Web site pursuant to subdivision  
5 (a), may, upon rectifying the problem or complying with the  
6 standard that required inclusion of the information described in  
7 paragraph (3) of subdivision (a), do either of the following:
- 8 (1) Remove the information required by paragraph (3) of  
9 subdivision (a), from the consumer confidence report that is posted  
10 on the public water system's Internet Web site.
- 11 (2) Amend the consumer confidence report posted on the public  
12 water system's Internet Web site to include the date on which the  
13 problem identified in the information required pursuant *to*  
14 paragraph (3) of subdivision (a) was rectified or compliance was  
15 achieved.